Before Harsimran Singh Sethi,J.

ASHOK KUMAR AND OTHERS–*Petitioners*

versus

STATE OF PUNJAB AND ANOTHER- *Respondents*

CWP No. 14898 of 2019

November 27, 2019

Constitution of India—Article 14, 226—Right to equality and protection against discrimination, when can be invoked—In the absence of any right to the benefit, it cannot be claimed even if it has been extended to someone else—Granting such a benefit would only perpetuate the illegality—There is no negative equality, only a person who has a right can claim equality—In the absence of right no equality/discrimination can be claimed —Petition dismissed.

Held that the reliance, which is being placed by learned counsel for the petitioners for the grant of benefit to the petitioners in view of decision rendered in CWP No.1863 of 1993, will not come to the rescue of the petitioners for the grant of benefit as the order was passed by this Court much prior to the decision of Civil Appeals No.3487-3492 of 2004, decided on 12.02.2015. Once the said decision was passed by this Court and the judgment intra party had become final, the respondents had no option but to implement the same, but keeping in view the subsequent facts, especially that the petitioners were not before this Court prior to the year 2019 and had kept quiet for a period of about 40 years, they were to be governed by the settled principle of law, which has been settled by the highest Court of Law as it exist today. The position of law, in respect of the claim of the petitioners in their writ petitions, is that the Hon'ble Supreme Court of India has already held by a detailed order that the benefit of one premature increment cannot be granted to the Ad-hoc employees, who were working on Ad-hoc basis on the date of the strike and therefore, the grant of benefit to the petitioners in CWP No.1863 of 1993 keeping in view the order passed by this Court, which is prior to the date of the passing of the order by the Hon'ble Supreme Court of India cannot also come to the rescue of the petitioners for the grant of benefit of increment for not participating in strike.

Held. that even otherwise, even grant of benefit of one increment to the petitioners in Amarjit Kaur's case (supra) in the year 2018 will not give a right to the petitioner to claim the same on the

basis of discrimination. Discrimination can only be claimed, in case there is a right. In the absence of any right to claim the benefit, the same cannot be claimed, even if, the said benefit has been wrongly extended to anyone else. There is no negative discrimination, which is available so as to claim a benefit, without there being any right existing in the claimant. Granting a benefit to a claimant without there being any right to claim the same, but on the ground that said benefit has been extended to another though contrary to law, will be amounting to perpetuating the illegality further, which the Courts cannot do. Hon'ble Supreme Court of India in **CA No.7295-2019** titled as **'State of Odisha and another Vs. Anup Kumar Senapati and another, 2019(3) ESC 835, decided on 16.09.2019,** has held that there is no negative equality and it is only in case, a person has right, he/she can claim equality and in the absence of any right, no equality/discrimination can be claimed by the person.

Held that in the present case, keeping in view order passed by the Hon'ble Supreme Court of India on 12.2.2015 in CA-3487-3492-2004, petitioners do not have right to claim benefit of increment for not participating in strike and order passed by the Hon'ble Supreme Court of India is a law and, therefore, petitioners are claiming the benefit of increment, which is contrary to the law settled by Hon'ble Supreme Court of India, which is impermissible, even, on the ground of discrimination. Hence, claim of the petitioners has rightly been rejected by the respondents by the impugned order.

Sunny Singla, Advocate,
Riti Aggarwal, Advocate,
for the petitioners
in CWP-14898-2019; CWP-15110-2019 CWP-15134-2019; CWP-15148-2019; CWP-18058-2019; CWP-18088-2019; CWP-18634-2019 & CWP-32515-2019

R.K. Arora, Advocate
for the petitioners
in CWP-19497-2019; CWP-27708-2019 and CWP-30113-2019.

Navdeep Chhabra, D.A.G., Punjab.

HARSIMRAN SINGH SETHI, J. oral

(1) By this common order, ten writ petitions, description of which has been given in the heading, are being decided as all the writ petitions involve the same question of law and similar facts. For this

order, facts are being taken from CWP-14898-2019 titled as 'Ashok Kumar and others Vs. State of Punjab and another'.

(2) The grievance which is being raised by the petitioners in the present writ petitions is that their claim for the grant of one premature increment for non-participation in the strike dated 08.02.1978 has been declined by the respondents by passing the impugned order dated 28.02.2019 (Annexure P-7), which is discriminatory in nature.

(3) As per the facts stated in the petitions, there was a strike call given by the employee's Unions in the State of Punjab, which was to be observed on 08.02.1978. In order to give incentives to the employees not to accept the call for strike given by the labour unions, a circular was issued by the Government of Punjab on 06.02.1978 to take stern steps against the employees, who will participate in the strike, which was scheduled for 08.02.1978. After the said date passed, the Government of Punjab issued a circular on 16.06.1978, vide which they decided to give certain benefits to the employees, who did not participate in the strike, which took place on 08.02.1978. The benefit to be extended to the employees who did not participate in the strike was a grant of a premature increment on the scale of pay which the employees were working as on 08.02.1978. Initially, there was a confusion as to whether the benefit of the letter dated 16.06.1978 was to be given only to the regular employees or all the employees, irrespective of the fact whether they were working on adhoc basis or temporary basis. This position was clarified by the Government of Punjab on 06.01.1979 that all the employees whether working on regular basis, temporary or adhoc basis, will be entitled for the benefit of one premature increment in case they have not participated in the strike on 08.02.1978.

(4) The claim of the petitioners is that they did not participate in the strike held on 08.02.1978 and therefore, they were entitled for the grant of one premature increment keeping in view the circular dated 16.06.1978. It is an admitted position that petitioners were working on adhoc basis on the date of the strike i.e. 08.02.1978. Petitioners have stated in the writ petitions that there were lots of employees, who are not extended the benefit of premature increment and they approached this Court by filing writ petitions and the benefit of the increment was granted to them by this Court, which order of this Court was upheld up to the Hon’ble Supreme Court of India. One such writ petition was **CWP-3504 of 1989** titled as ***Ramesh Chander and others*** versus ***State of Punjab and others***, which was allowed by this Court on 18.05.2009 against which the SLP No.14219 of 2015 was dismissed by the Hon’ble

Supreme Court.

(5) Learned counsel for the petitioners argues that another **CWP No.1863 of 1993** titled as ***Amarjit Kaur and others*** versus ***State of Punjab and others*****,** was also allowed by this Court on 03.10.2013 granting the benefit of increment to similarly situated employees, which judgment has already been implemented by the respondents by passing order dated 01.03.2018.

(6) As the benefit of grant of one increment was not being granted to the petitioners, petitioners approached this Court by filing **CWP No.19079 of 2018** titled as ***Sansar Chand and others*** versus ***State of Punjab and others***, which was disposed of by this Court on 03.08.2018 (Annexure P-6) directing the respondents to consider the claim of the petitioners as per the settled principle of law within a period of three months by passing an appropriate order on the legal notice which the petitioners had served upon the respondents.

(7) In pursuance to the said direction given, the respondents have passed a detailed order dated 28.02.2019 (Annexure P-7) declining the claim of the petitioners. The claim of the petitioners has been declined on the ground that the Hon'ble Supreme Court of India passed an order in Civil Appeal No.3487-3492 of 2004, decided on 12.02.2015, wherein, it has been held by the Hon'ble Supreme Court of India that the employees, who were not working on regular basis on the date of strike, will not be entitled for the benefit of the premature increment. The said order of the respondents dated 28.02.2019 (Annexure P-7) is under challenge in the present writ petition.

(8) Learned counsel for the petitioners argues that declining of the benefit to the petitioners by the respondents by relying upon the order dated 12.02.2015 passed in Civil Appeal No.3487-3942 of 2004 is discriminatory as even the respondents in the said Civil Appeal, have already been granted the benefit of the increment and therefore, declining the same to the petitioners is discriminatory. The argument of learned counsel for the petitioners is that once in the case where the Hon'ble Supreme Court of India, while deciding Civil Appeal No.3487 of 2004, has held that the benefit of the premature increment cannot be allowed to an employee who was not regular on the date of the strike and still, the said benefit has been extended to the employees, who were respondents and are similarly situated as petitioners in the said appeal, declining of the grant of one premature increment to the petitioners is discriminatory and therefore, the placing of the reliance by the respondents on the said decision of the Hon'ble Supreme Court of India,

is by a pick and choose method.

(9) Upon notice of motion, the respondents have filed the reply.

(10) In the reply, the respondents have clarified the position. The respondents have stated that initially, the said Civil Appeal No.3487 of 2004 was dismissed by the Hon'ble Supreme Court of India on technical grounds on 03.11.2011. After the said dismissal of the Civil Appeal, the respondents in the said appeal, who were the petitioners before this Court had been allowed the benefit of premature increment as they filed a contempt petition before this Court claiming the benefit of increment, as extended by this Court.

(11) Respondents have clarified that as the Special Leave Petition filed by the respondents had already been dismissed by the Hon'ble Supreme Court of India and contempt petition had been filed before this Court for the implementation of the order so as to release the increment in favour of the employees in pursuance to the order passed by this Court, the benefit was released to the respondents in Civil Appeal No.3487 of 2004, vide letter dated 20.12.2012 (Annexure R-3). The respondents further stated that after the grant of the benefit, the review petition, which was filed by the State for recalling the order dated 03.11.2011, by which, the Civil Appeal No.3487 of 2004 was dismissed, was allowed by the Hon'ble Supreme Court of India in the year 2013 and the appeal was restored. Before the benefit of increment could be granted to the respondent in Civil Appeal No.3487 of 2004, the respondents-State filed a review petition before the Hon'ble Supreme Court and the order dated 03.11.2011 dismissing the Civil Appeal No.3487 of 2004 was recalled in the year 2013 and the appeal was restored for hearing. As there was no interim order passed by the Hon'ble Supreme Court, the State of Punjab had no option, except to implement the decision of this Court granting the benefit of premature increment and the same was granted, vide letter dated 20.12.2012 (Annexure R-3).

(12) The respondents-State have further mentioned in the reply that Civil Appeal No.3487 of 2004 came up for final hearing alongwith other Civil Appeals and the same were allowed by the Hon'ble Supreme Court of India on 12.02.2015 and it was held by the Apex Court that the employees, who were working on Ad-hoc basis or temporary basis on the date of the strike, are not entitled for the grant of the premature increment and after the said decision, the benefit has not been extended to anyone, who was working on Ad-hoc basis. The relevant part of the reply is as under: -

"4. That in this regard it is submitted that the persons, who were party before the Supreme Court, wherein the SLP filed by State was initially dismissed on 03.11.2011 and subsequently allowed in favour of the State as on 12.02.2015, were granted the benefit of increment for not participating in the strike in compelling circumstances, however, subject to final outcome of Review Petitions pending in the Apex Court. It is also pertinent to mention that no other employee except petitioners of SLP No.14219 of 2019 in CWP No.3504 of 1989 and CWPs decided in terms of its order/judgment who was on adhoc service on 08.02.1978 has been extended the benefit of the increment for not participating in the strike held on 08.02.1978 after the decision dated 12.02.2015 rendered by the Hon'ble Supreme Court of India in Civil Appeal No.3487-3492 of 2004.

5. That brief Chart of the important events relevant to instant case is amended hereto as (Annexure R-1) for kind perusal of the Hon'ble Court and are not reproduced here for the sake of brevity.

6. That it is respectfully submitted that it would be pertinent to mention that against the decision of batch of writ petitions which were decided by this Hon'ble Court alongwith CWP No.19057 of 2001, the State of Punjab preferred appeals being CAs No.3487-3492-2004 in the Supreme Court of India. At one point of juncture, the aforesaid appeals were dismissed by Apex Court vide order dated 03.11.2011 on technical grounds rather than on merits (Annexure R-2). Since a number of COCPs came to be filed seeking grant of the said premature increment in view of the legal position obtaining at the relevant point, therefore, the matter was taken up with the Finance Department. The Department of Finance vide its letter No.7/124/123/2/1648 dated 19.11.2012 gave its concurrence to grant the benefit of one premature increment subject to final outcome of pending SLPs in the Apex Court. Thereafter, vide office letter No.12/186-2002 Amla-3(5), dated 20.12.2012, instructions were issued to all the DEOs for the grant of one premature increment to adhoc employees who did not participate in the strike subject to final outcome of Review

Petitions being filed in the Supreme Court of India (Annexure hereto as Annexure R-3 letter dated 20.12.2012).

7. That it is further submitted that pursuant to the applications filed by State Government, the above said dismissed Civil Appeals were restored by the Apex Court. Ultimately, the Apex Court, vide order dated 12.02.2015 allowed the above said appeals preferred by the State Government with the following operative order: -

"7. Having said that, we think it appropriate to refer to the second principle that has been laid down by the full Bench of the High Court in paragraph 18 of the said judgment. It reads as follows: -

"18. So far as the point raised by the learned counsel for the petitioner that those adhoc employees who had not been regularized by February 8, 1978 were also granted the benefit of premature increment though they might have been regularized later on but w.e.f. date prior to or up to February 8, 1978, and therefore, the petitioners who were also regularized though much after February 8, 1978, should not be discriminated against, we find no force in this argument. Those adhoc employees who were liable to be regularized on or before February 8, 1978, but for no fault of their no order had been passed were held entilted to the benefit by the Government as if in fact they were regular employees as on February 8, 1978. In the words, the benefit was only been given of premature increment to regular or virtually regular employees who were there as such on February 8, 1978.

The aforesaid paragraph carves out situation that if an employee is regularized at a later stage but with effect from the date when the strike took place, he will be entitled to the benefit of premature increment. The facts are not clear in this regard and therefore we would like to competent authority of the State Government to scrutinize the cases of each of the respondents in the backdrop of Para 18 of the Full Bench which we have reproduced hereinabove within a period of three months and communicate to them."

8. That while allowing the appeal of the State Government, the Apex Court, after having accepted the

principles laid down by the Full Bench, held that only those ad-hoc employees are entitled to the benefit of premature increment on account of non-participation in strike resorted to by the Punjab Government employees on 08.02.1978, whose service had ultimately been regularized w.e.f. 08.02.1978 or prior thereto. Consequently, vide office Memo No.12/186-2002 Amla-3(5) dated 29.6.2015 (Annexure R-4) instructions were issued accordingly and in order to ensure effective implementation of the directions of the Apex Court, a public notice dated 28.05.2015 was also got published. (Annexure R-5).

9. That in view of the aforesaid order dated 12.02.2015 of the Hon'ble Apex Court, the benefit previously granted in pursuance of the dismissal of the SLP order dated 03.11.2011 in the first round of litigation should have been reviewed to the extent provided for in the aforesaid orders. Moreso, since the said benefit, itself was granted conditionally subject to the outcome of the pending SLPs. However, there was an in-advertent oversight on this account and while issuing the instructions dated 29.06.2015 as stated in para No.8 above, the benefit of the premature increment granted previously was not withdrawn to the extent as adjudicated by Hon'ble Apex Court in CA,s No.3487-3492 of 2004. Therefore, in order to ensure compliance of the directions of Hon'ble Supreme Court of India given in the decision of CA No.3487-3492 of 2004 decided on 12.02.2015 in letter and spirit, it has been directed to all the District Education Officers (SE) and (EE) that benefit of one premature increment granted conditionally in pursuance of instructions dated 20.12.2012 be revised and withdrawn from all concerned in accordance with and to the extent provided for in the order of the Hon'ble Supreme Court of India in the aforesaid Civil Appeals. Further, the necessary action may also be initiated to revise the pensionary benefits accordingly, wherever applicable and a compliance report be submitted to this Directorate at the earliest."

(13) A bare perusal of the above would show that respondents have stated that even the benefits, which were granted to the respondents in Civil Appeal No.3487 of 2004, was prior to the decision

rendered by the Hon'ble Supreme Court of India on 12.05.2015 and now a public notice dated 28.05.2015 has been issued to them for the withdrawal of the said benefit keeping in view the order passed by the Hon'ble Supreme Court dated 12.02.2015. The respondents have further stated in the reply that another SLP being SLP No.3874 of 2009, which was also pending before the Hon'ble Supreme Court, wherein also, this Court had allowed the benefit of one premature increment to the Adhoc employees, has been decided in terms of the order passed in Civil Appeals No.3487-3492 of 2004, vide order dated 16.08.2017 and therefore, the position as of now is that the employees, who were working on Ad-hoc basis or temporary basis on the date of the strike, are not eligible for the benefit of one premature increment.

(14) I have heard learned counsel for the parties and have gone through the record with their able assistance.

(15) The question, which has been posed before this Court is, whether the petitioners who were working on Ad-hoc basis are entitled for the grant of benefit of one premature increment for not participating in the strike held on 08.02.1978.

(16) Keeping in view the order passed by the Hon'ble Supreme Court of India in Civil Appeals No.3487-3492 of 2004, decided on 12.02.2015 as well as the order passed in SLP No.3874 2009, decided on 16.08.2017, it is clear that the employees working on Ad-hoc or temporary basis on the date of the strike are held not entitled for the benefit of one premature increment. By a detailed order, the Hon'ble Supreme Court has held that only the employees who were working on regular basis are entitled for the benefit of one premature increment, hence, the claim, which is being made by the petitioners for the grant of benefit of premature increment though working on Ad-hoc basis, is contrary to the settled principle of law settled by the Hon'ble Supreme Court of India in Civil Appeals No.3487-3492 of 2004, decided on 12.02.2015 and SLP No.3874 of 2009, decided on 16.08.2017.

(17) The argument which has been raised by learned counsel for the petitioners is that once the benefit of one premature increment has been extended to the respondents in Civil Appeals No.3487-3492 of 2004, then how can the same benefit be denied to the present petitioners. The circumstances under which benefit of increment to the respondents in Civil Appeal No.3487-3492 of 2004 was extended has already been explained by the respondents. Benefit of increment was extended to the employees as the Civil Appeals No.3487-3492 of 2004 was initially dismissed by the Supreme Court of India on 03.11.2011

and the contempt petitions were filed claiming the benefit and as there was no order in the favour of the respondents-State, the respondents-State had no option, except to release the benefit to the employees. After the release of the benefit to the employees, the order of dismissal dated 03.11.2011, passed in Civil Appeal No.3487-3492 of 2004, was recalled in the year 2013 and thereafter, the Civil Appeal No.3487 of 2004 was allowed on 12.02.2015. Now, the benefit as extended to the respondents in Civil Appeal No.3487- 3492 of 2004, which was extended much prior to the date when appeal of the State was allowed, said benefit is being withdrawn by the respondents after adopting the due procedure, so as to remove the discrimination.

(18) Learned counsel for the petitioners further argues that not only the benefit of one premature increment has been extended to the respondents in Civil Appeal No.3487-3492- of 2004, but in case of **CWP No.1863 of 1993** titled as ***Amarjit Kaur and others*** versus ***State of Punjab and others***, **decided on 03.10.2003,** the benefit of grant of increment for not participating in the strike has been extended in the year 2018 and therefore, once the benefit has been extended to similarly a situated employee in 2018, the denial of the same by the respondents by placing reliance upon the order passed by the Hon'ble Supreme Court in Civil Appeals No.3487-3492 of 2004 is totally discriminatory. It is a matter of fact that **CWP No.1863 of 1993** titled as ***Amarjit Kaur and others*** versus ***State of Punjab and others***, was allowed by this Court on 03.10.2013.

(19) Counsel for the respondents states that once an order in the year 2013 had already become final as no SLP was preferred against the same, the respondents had no option, but to implement the same, but in the present case, the benefit cannot be extended to the petitioners in the year 2019, when the Hon'ble Supreme Court has already passed an order declining the same relief to the similarly situated persons as the petitioners.

(20) The reliance, which is being placed by learned counsel for the petitioners for the grant of benefit to the petitioners in view of decision rendered in CWP No.1863 of 1993, will not come to the rescue of the petitioners for the grant of benefit as the order was passed by this Court much prior to the decision of Civil Appeals No.3487-3492 of 2004, decided on 12.02.2015. Once the said decision was passed by this Court and the judgment intra party had become final, the respondents had no option but to implement the same, but keeping in view the subsequent facts, especially that the petitioners were not before this

Court prior to the year 2019 and had kept quiet for a period of about 40 years, they were to be governed by the settled principle of law, which has been settled by the highest Court of Law as it exist today. The position of law, in respect of the claim of the petitioners in their writ petitions, is that the Hon'ble Supreme Court of India has already held by a detailed order that the benefit of one premature increment cannot be granted to the Ad-hoc employees, who were working on Ad-hoc basis on the date of the strike and therefore, the grant of benefit to the petitioners in CWP No.1863 of 1993 keeping in view the order passed by this Court, which is prior to the date of the passing of the order by the Hon'ble Supreme Court of India cannot also come to the rescue of the petitioners for the grant of benefit of increment for not participating in strike.

(21) Even otherwise, even grant of benefit of one increment to the petitioners in Amarjit Kaur's case (supra) in the year 2018 will not give a right to the petitioner to claim the same on the basis of discrimination. Discrimination can only be claimed, in case there is a right. In the absence of any right to claim the benefit, the same cannot be claimed, even if, the said benefit has been wrongly extended to anyone else. There is no negative discrimination, which is available so as to claim a benefit, without there being any right existing in the claimant. Granting a benefit to a claimant without there being any right to claim the same, but on the ground that said benefit has been extended to another though contrary to law, will be amounting to perpetuating the illegality further, which the Courts cannot do. Hon'ble Supreme Court of India in **CA No.7295-2019** titled as ***State of Odisha and another*** versus ***Anup Kumar Senapati and another***[1]**, decided on 16.09.2019,** has held that there is no negative equality and it is only in case, a person has right, he/she can claim equality and in the absence of any right, no equality/discrimination can be claimed by the person. Relevant paragraph of the judgment is as under:-

> "It was lastly submitted that concerning other persons, the orders have been passed by the Tribunal, which was affirmed by the High Court and grants-in-aid has been released under the Order of 1994 as such on the ground of parity this Court should not interfere. No doubt, there had been a divergence of opinion on the aforesaid issue. Be that as it may. In our opinion, there is no concept of negative

[1] 2019(3) ESC 835

equality under Article 14 of the Constitution. In case the person has a right, he has to be treated equally, but where right is not available a person cannot claim rights to be treated equally as the right does not exist, negative equality when the right does not exist, cannot be claimed. ***In Basawaraj and another Vs. Special Land Acquisition Offficer,*** (2013) 14 SCC 81, it was held thus:

"8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide Chandigarh Admn. v. Jagjit Singh, (1995) 1 SCC 745, ***Anand Buttons Ltd. V. State of H aryana, (2005) 9 SCC 164, K.K. Bhalla V. State of M.P., (2006) 3 SCC 581 and Fuljit Kaur V. State of Punjab, (2010) 11 SCC 455.)"***

In ***Chaman Lal v. State of Punjab and others,*** (2014) 15 SCC 715, it was observed as under:-

"16. More so, it is also settled legal proposition that Article 14 does not envisage for negative equality. In case a wrong benefit has been conferred upon someone inadvertently or otherwise, it may not be a ground to grant similar relief to others. This Court in ***Basawaraj V. Land***

Acquisition Officer, (2013) 14 SCC 81 considered this issue and held as under:- (SCC p. 85, para 8)

"8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated.Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide Chandigarh ***Admn. v. Jagjit Singh, (1995) 1 SCC 745, Anand Buttons Ltd. V. State of Haryana, (2005) 9 SCC 164, K.K. Bhalla v. State of M.P., (2006) 3 SCC 581 and Fuljit Kaur v. State of Punjab, (2010) 11 SCC 455.)""***

In ***Fuljit Kaur v. State of Punjab and others,*** (2010) 11 SCC 455, it was observed thus:

"11. The respondent cannot claim parity with ***D.S. Laungia v. State of Punjab,*** AIR 1993 P & H 54, in view of the settled legal proposition that Article 14 of the Constitution of India does not envisage negative equality. Article 14 is not meant to perpetuate illegality or fraud. Article 14 of the Constitution has a positive concept. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of

individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim the benefits on the basis of the wrong decision. Even otherwise Article 14 cannot be stretched too far otherwise it would make function of the administration impossible. (***Vide Coromandel Fertilizers Ltd. V. Union of India, 1984 Supp SCC 457, Panchi Devi v. State of Rajasthan, (2009) 2 SCC 589 and Shanti Sports Club v. Union of India, (2009) 15 SCC 705)".***

In ***Doiwala Sehkari Shram Samiti Ltd. v. State of Uttaranchal and others,*** (2007) 11 SCC 641, this Court in the context of negative equality observed thus:

"28. This Court in Union of India v. International Trading Co. has held that two wrongs do not make one right. The appellant cannot claim that since something wrong has been done in another case, directions should be given for doing another wrong. It would not be -27-setting a wrong right but could be perpetuating another wrong and in such matters, there is no discrimination involved. The concept of equal treatment on the logic of Article 14 cannot be pressed into service in such cases. But the concept of equal treatment presupposes existence of similar legal foothold. It does not countenance repetition of a wrong action to bring wrongs on a par. The affected parties have to establish strength of their case on some other basis and not by claiming negative quality. In view of the law laid down by this Court in the above matter, the submission of the appellant has no force. In case, some of the persons have been granted permits wrongly, the appellant cannot claim the benefit of the wrong done by the Government."

In ***Bondu Ramaswamy and others v. Bangalore Development Authority and others,*** (2010) 7 SCC 129, this Court observed thus:

"146. If the rules/scheme/policy provides for deletion of certain categories of land and if the petitioner falls under those categories, he will be entitled to relief. But if under the rules or scheme or policy for deletion, his land is not eligible

for deletion, his land cannot be deleted merely on the ground that some other land similarly situated had been deleted (even though that land also did not fall under any category eligible to be deleted), as that would amount to enforcing negative equality. But where large extents of land of others are indiscriminately and arbitrarily deleted, then the court may grant relief, if, on account of such deletions, the development scheme for that area has become inexecutable or has resulted in abandonment of the scheme."

In ***Kulwinder Pal Singh and another v. State of Punjab and others,*** (2016) 6 SCC 532, this Court while relying upon ***State of U.P. v. Rajkumar Sharma,*** (2006) 3 SCC 330, observed as under:

"16. The learned counsel for the appellants contended that when the other candidates were appointed in the post against dereserved category, the same benefit should also be extended to the appellants. Article 14 of the Constitution of India is not to perpetuate illegality and it does not envisage negative equalities.

In ***State of U.P. v. Rajkumar Sharma*****,** (2006) 3 SCC 330 it was held as under (SCC p. 337, para 15)

"15. Even if in some cases appointments have been made by mistake or wrongly, that does not confer any right on another person. Article 14 of the Constitution does not envisage negative equality, and if the State committed the mistake it cannot be forced to perpetuate the same mistake. (See *Sneh Prabha v. State of U.P., (1996) 7 SCC 426; Jaipur Development Authority v. Daulat Mal Jain, (1997) 1 SCC 35; State of Haryana v. Ram Kumar Mann, (1997) -28- 3 SCC 321; Faridabad CT Scan Centrev. DG, Health Services, (1997) 7 SCC 752; Jalandhar Improvement Trust V. Sampuran Singh, (1999) 3 SCC 494; State of Punjab v. Rajeev Sarwarl, (1999) 9 SCC 240; Yogesh Kumar v. Govt. (NCT of Delhi), (2003) 3 SCC 548; Union of India v. International Trading Co., (2003) 5 SCC 437 and Kastha Niwarak Grahnirman Sahakari Sanstha Maryadit v. Indore Development Authority, (2006) 2 SCC 604.)"*

Merely because some persons have been granted benefit illegally or by mistake, it does not confer right upon the

appellants to claim equality."

In *Rajasthan State Industrial Development & Investment Corporation v. Subhash Sindhi Cooperative Housing Society, Jaipur and others,* (2013) 5 SCC 427, this Court held as under:

"19. Even if the lands of other similarly situated persons have been released, the Society must satisfy the Court that it is similarly situated in all respects, and has an independent right to get the land released. Article 14 of the Constitution does not envisage negative equality, and it cannot be used to perpetuate any illegality. The doctrine of discrimination based upon the existence of an enforceable right, and Article 14 would hence apply, only when invidious discrimination is meted out to equals, similarly circumstanced without any rational basis, or to relationship that would warrant such discrimination. [*Vide Sneh Prabha v. State of U.P., (1996) 7 SCC 426, Yogesh Kumar v. Govt. (NCT of Delhi),, (2003) 3 SCC 548, State of W.B. v. Debasish Mukherjee, (2011) 14 SCC 187 and Priya Gupta v. State of Chhattisgarh, (2012) 7 SCC 433.]"*

In ***Anup Das and others v. State of Assam and others,*** (2012) 5 SCC 559, this Court observed as under:

"19. In a recent decision rendered by this Court in State of U.P. v. Rajkumar Sharma, (2006) 3 SCC 330, this Court once again had to consider the question of filling up of vacancies over and above the number of vacancies advertised. Referring to the various decisions rendered on this issue, this Court held that filling up of vacancies over and above the number of vacancies advertised would be violative of the fundamental rights guaranteed under Articles 14 and 16 of the Constitution and that selectees could not claim appointments as a matter of right. It was reiterated that mere inclusion of candidates in the select list does not confer any right to be selected, even if some of the vacancies remained unfilled. This Court went on to observe further that even if in some cases appointments had been made by mistake or wrongly, that did not confer any right of appointment to another person, as Article 14 of the Constitution does not envisage negative equality and if the State had committed a mistake, it cannot be forced to

perpetuate the said mistake."

In ***State of Orissa and another v. Mamata Mohanty***, (2011) 3 SCC 436, it was observed:

"56. It is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief. (Vide Chandigarh Admn. v. Jagjit Singh, (1995) 1 SCC 745, *Yogesh Kumar v. Govt. of NCT of Delhi, (2003) 3 SCC 548, Anand Buttons Ltd. v. State of Haryana, (2005) 9 SCC 164, K.K. Bhalla v. State of M.P., (2006) 3 SCC 581, Krishan Bhatt v. State of J&K, (2008) 9 SCC 24, State of Bihar v. Upendra Narayan Singh, (2009) 5 SCC 65 and Union of India v. Kartick Chandra Mondal*, (2010) 2 SCC 422)"

31. It is apparent on consideration of Paragraph 4 of order of 2004 that only saving of the right is to receive the block grant and only in case grant in aid had been received on or before the repeal of the Order of 2004, it shall not be affected and the Order of 1994 shall continue only for that purpose and no other rights are saved. Thus, we approve the decision of the High Court in Lok Nath Behera (supra) on the aforesaid aspect for the aforesaid reasons mentioned by us."

(22) A bare perusal of the above would show that after discussing the law on the issue, Hon'ble Supreme Court of India has held that unless, there is a right of an employee to claim benefit, the same cannot be claimed on the basis of discrimination. In ***Anup Kumar's*** case (supra) the benefit, which was being claimed was extended to others by the Court and thereafter there was a divergent opinion, according to which, benefit, which was being claimed, was contrary to the settled principle of law and the Hon'ble Supreme Court of India held that once there is no right to claim benefit, the same cannot be granted on the basis of discrimination.

(23) In the present case, keeping in view order passed by the Hon'ble Supreme Court of India on 12.2.2015 in CA-3487-3492-2004, petitioners do not have right to claim benefit of increment for not participating in strike and order passed by the Hon'ble Supreme Court

of India is a law and, therefore, petitioners are claiming the benefit of increment, which is contrary to the law settled by Hon'ble Supreme Court of India, which is impermissible, even, on the ground of discrimination. Hence, claim of the petitioners has rightly been rejected by the respondents by the impugned order.

(24) This Court finds no infirmity in declining of the relief to the present petitioners keeping in view the orders passed by the Hon'b1e Supreme Court of India in Civil Appeals No.3487-3492 of 2004, decided on 12.02.2015 as well as in SLP No.3874 of 2009, decided on 16.08.2017.

(25) In view of the above, present writ petitions stand dismissed.

Tribhuvan Dahiya